Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Application of	)	
	)	
TELEPHONE AND DATA SYSTEMS, INC.	)	
	)	File No. 10209-CL-P-715-B-88
For Authority To Construct And Operate A Domestic Public Telecommunications System On Frequency Block B To Serve Wisconsin RSA #8 - Vernon	)	

REPLY TO OPPOSITION TO
CONTINGENT APPLICATION FOR REVIEW

Telephone and Data Systems, Inc. ("TDS"), by its attorneys, hereby files its Reply to the "Opposition" to TDS's "Contingent Application For Review" filed by Century Cellunet, Inc. and other wireline applicants in Wisconsin RSA #8 - Vernon (hereafter "Settling Parties"). Settling Parties' Opposition does not discuss, much less refute, TDS's argument in our "Contingent Application For Review" demonstrating that the Common Carrier Bureau erred in holding that a violation of Section 22.921(b)(1) had occurred when UTELCO, Inc. ("UTELCO") had entered into a settlement agreement with Settling Parties.[1] Instead, Settling Parties cursorily proffer several additional arguments to support their position that TDS's application should be dismissed, none of

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[1] Settling Parties merely cite their previous filings, and allege that TDS's arguments were "rejected" in the Common Carrier Bureau's Reconsideration Order. However, as we noted in our Contingent Application For Review, the Reconsideration Order does not explain how Section 22.921(b)(1) was violated by UTELCO's entry into the settlement group, much less "reject" TDS's arguments.

which can withstand scrutiny.

I. UTELCO's Entry Into Settling Parties' Settlement Group Did Not "Stack" or "Skew" The Lottery

Settling Parties contend that it does not require "rocket science" to understand that TDS sought to "stack" the lottery by UTELCO's entry into Settling Parties' settlement group. TDS, they argue, should not be "let off the hook" for being the first applicant to think of "stacking the lottery" in this new way (Opposition p.3). Settling Parties then cite the Commission's determination to prevent a "creative applicant"[2] from "think[ing] up a novel way of improperly skewing the lottery" and urge the Commission not to "exonerate TDS for its conduct" (Opposition, p.4).

However, as we demonstrated at pp.1-5 of our Opposition to Settling Parties' Application For Review, contrary to Settling Parties contentions, TDS did nothing to "stack" or "skew" the lottery. On the contrary, TDS and UTELCO made sure that the lottery would not be adversely affected when only TDS, and not UTELCO, filed a cellular application. Since UTELCO was not an applicant, "creative" or otherwise, its actions had no impact on Settling Parties' lottery chances. There were sixteen applicants, with no cross ownership interests among them. Thirteen of the applicants signed a settlement agreement. Three did not. One of those three won the lottery. The admission of non-applicant UTELCO

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[2] Cellular Radio Lotteries, 101 FCC 2d 577, 600 (FCC 1985).

into the settlement group had no bearing on which ping-pong ball was drawn from the FCC's "forced air blower." Only an interest in an actual lottery participant, an applicant, can be held to violate Section 22.921(b(1), for only having an interest more than one application could possibly affect a person's chances of receiving an interest in a license as the consequence of a lottery.

II. TDS Was "Accountable" For UTELCO's Actions In The Only Way Which The FCC's Rules Require

Settling Parties maintain that a "major fallacy" in TDS's position has been its failure to be "properly accountable" for the actions of its "subsidiary," UTELCO. On the contrary, TDS has been "accountable" for the actions of UTELCO in the only way the Commission's rules require it to be "accountable."

Section 22.921(b)(1) forbids two wireline applicants with common ownership in excess of one percent from filing in the same RSA. Accordingly, UTELCO did not file the application for Wisconsin RSA #8 which it would have otherwise been entitled to file. Also, TDS is a 49% shareholder of UTELCO and UTELCO therefore had to be listed and was listed as a "subsidiary" of TDS in TDS's application, pursuant to Section 22.13(a)(1) of the FCC's Rules, which requires that cellular applicants consider all companies in which they hold a 5% or greater interest to be "subsidiaries" for the limited reporting purpose of that Rule.

Settling Parties specify no other respect in which TDS should properly be held "accountable" under the Commission's rules. Instead, they rely on such assertions as that TDS had a "cognizable

ownership relationship with UTELCO" (Opposition, p.3). In the context of an actual rule, setting forth permissible and impermissible ownership interests, such as Section 22.921(b)(1) or Section 73.3555 (the broadcast "multiple ownership" rule) the word "cognizable" has a discernible meaning, namely an interest which is "counted" under the rule. In that sense, TDS was fully accountable for its "cognizable" relationship with UTELCO when it reported its ownership interest in UTELCO and when UTELCO did not file an application. However, as it is used by Settling Parties, "cognizable" is a meaningless word, and is used to mislead rather than to clarify. TDS complied with all applicable FCC rules concerning its relationship with UTELCO. It is not "accountable" for anything else.

III. Settling Parties Do Not Acknowledge Their Own Responsibility For This Situation

As noted above, Settling Parties belabor TDS for not acknowledging that it is, in some unspecified way, "accountable" for the actions of UTELCO. However, Settling Parties fail to acknowledge their own responsibility for the state of affairs giving rise to Century's initial Petition To Deny, their Petition For Reconsideration and now their Application For Review.

It was the decision of Settling Parties to admit four non-applicants into their settlement group which created the possibility that an applicant, with some degree of common ownership with a non-applicant signatory, might not sign the settlement agreement and then might win the lottery. That decision was

properly their responsibility and if anyone should be held "accountable" for it, it is Settling Parties. The case for their accountability becomes stronger when one realizes that Settling Parties' decision to admit UTELCO to their settlement group without simultaneously requiring TDS to sign the settlement agreement as a condition of UTELCO's entry could not possibly result in any detriment to their interests and could only potentially help them.

As was noted in TDS's Opposition, if Settling Parties really did consider TDS's entry into the settlement group to be "consideration" for UTELCO's entry, then TDS's failure to enter the group would have constituted grounds for excluding UTELCO from a future licensee partnership. Thus, assuming that a member of the settlement group had won the lottery, Settling Parties could have excluded UTELCO and retained their proportionate interests in the licensee partnership, thus rectifying any perceived "injustice" by TDS.

Conversely, if Settling Parties allowed UTELCO to sign the settlement agreement without requiring that TDS also sign in the hope of creating what they believed would be a forbidden cross interest between TDS and themselves, then Settling Parties were seeking to increase their odds of ultimately winning the authorization by rendering TDS ineligible if it won the lottery, which it did.

Finally, if Settling Parties effort to overturn TDS's grant ultimately fails, they will be no worse off than they were on March 15, 1989, the day they lost the lottery, which is the actual reason

for their complaint.

Far from being a detriment to Settling Parties, it is only their action in admitting UTELCO which has kept this proceeding alive for one and three quarter years.

Settling Parties have sought to hold TDS responsible for what they themselves did. It is an effort which must not succeed.

Conclusion

For the foregoing reasons, and those furnished in, our "Contingent Application For Review" and "Opposition," Settling Parties' Application For Review should be denied and TDS's construction permit grant should be reaffirmed.

Respectfully submitted,

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Certificate of Service

I, Barbara Frank, a secretary in the offices of Koteen & Naftalin, hereby certify that I have served a true copy of the foregoing "Reply" on the following, by First Class United States mail, this 4th day of April, 1991:

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